

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 16, 2004**

Court convened at 9:30 a.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Rylaarsdam, Acting P.J., O’Leary, J., and Fybel, J. M. Urena, Deputy Clerk attending.

CIVIL            THE CONSULTING GROUP, INC. et al.  
No.                V.  
G032446        CHARLES D. O’NEAL et al.

Merits. Cause called. Paul V. Gerst argued for appellants. Jason H. Anderson argued for respondents. Cause submitted.

CIVIL            McCARTHY BUILDING COMPANIES, INC.  
No.                v.  
G030544        TENG LI & ASSOCIATES

Merits. Cause called. Douglas Fee argued for amici curiae Structural Engineers Association of California et al. Richard A. Simpson argued for appellant and cross-respondent. Randall L. Erickson argued for respondent and cross-appellant. Cause submitted.

CIVIL            EL MORRO COMMUNITY ASSOCIATION  
No.                v.  
G032990        CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

Merits. Cause called. Nelson E. Brestoff argued for appellant El Morro Community Association. Stephen M. Miles argued for appellant The Wise Use Front. Hayley E. Peterson, Deputy Attorney General argued for respondents. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 16, 2004 (Cont'd)**

Court reconvened at 1:30 p.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Bedsworth, Acting P.J., Aronson, J., and Fybel, J. M. Urena, Deputy Clerk attending.

CRIM	THE PEOPLE
No.	v.
G032768	STEVEN P. COLEMAN

Merits. Cause called. Richard Schwartzberg argued for appellant. Ron Jacob, Deputy Attorney General argued for respondent. Cause submitted.

CRIM	THE PEOPLE
No.	v.
G033037	JORGE A. AGUILAR

Merits. Cause called. Lynne M. Patterson argued for appellant. Robin Davis, Deputy Attorney General argued for respondent. Cause submitted.

CIVIL	P-ROUZ CORPORATION
No.	v.
G031094	GRADY HANSHAW et al.

Merits. Cause called. David A. Robinson argued for appellant. Ernie Z. Park argued for respondent. Cause submitted.

CIVIL	ORANGE COUNTY SOCIAL
No.	SERVICES AGENCY
G033397	v.
G033851	BARRY W.

Merits. Cause called. Kathleen M. Mallinger argued for appellant and petitioner. Ward Brady, Deputy County Counsel argued for respondent. Cause submitted.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 16, 2004 (Cont'd)**

CIVIL            VICTOR S. D'AMORE  
No.              v.  
G032731       RITZ-CARLTON HOTEL COMPANY et al.

Merits. Cause called. Robert J. Wheeler argued for appellant. Kim Nguyen argued for respondent Drexel Heritage Furnishings. Kari M. Myron argued for respondent Ritz-Carlton Hotel Company. Cause submitted.

CIVIL            JOSHUA L. FREY et al.  
No.              v.  
G031928       TRANS UNION CORPORATION

Merits. Cause called. John N. Zarian argued for appellants. John Breisner argued for respondent. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 16, 2004 (Cont'd)**

CIVIL           WALTER T. DAVEY et al.  
No.             v.  
G031454       COLDWELL BANKER et al.  
G031744

Order filed. The petition for rehearing is DENIED.

Fybel, J.

We concur:   Sills, P.J.  
                  Rylaarsdam, J.

CRIM           THE PEOPLE  
No.             v.  
G032580       KHANH QUOC TRAN

Order filed. Pursuant to rule 23(e)(1) of the California Rules of Court, submission of the above-entitled matter is vacated so as to permit the parties to submit supplemental briefing. Counsel are ordered to submit a letter brief by September 1, 2004. Each counsel may then submit a letter brief in response to each other's initial brief by September 8, 2004. On September 9, 2004, the matter shall be resubmitted for the period allowed by law.

Rylaarsdam, Acting P.J.

We concur:   Moore, J.  
                  Fybel, J.

CRIM           THE PEOPLE  
No.             v.  
G032656       FERNANDO MANUEL MARTINEZ

Order filed. The petition for rehearing is GRANTED. Appellant is invited to file a supplemental brief no later than September 27, 2004, limited to the effect, if any, of *Blakely v. Washington* (2004) \_\_\_ U.S. \_\_\_, 124 S.Ct. 2531, on this appeal. Respondent may file a supplemental brief no later than October 27, 2004. Appellant may file a supplemental reply brief no later than November 12, 2004.

Bedsworth, J.

We concur:   Sills, P.J.  
                  Ikola, J.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 16, 2004 (Cont'd)**

CIVIL No. G033262	ORANGE COUNTY SOCIAL SERVICES AGENCY v. CHERIE C.	Not for publication
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Opinion filed. Appeal dismissed as moot.

Sills, P.J.

We concur: O'Leary, J.  
Ikola, J.

CRIM No. G033627	THE PEOPLE v. SEBASTIAN TORRES VALENCIA	Not for publication
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Opinion filed. Judgment affirmed.

Ikola, J.

We concur: Sills, P.J.  
Aronson, J.

CIVIL No. G033724	ORANGE COUNTY SOCIAL SERVICES AGENCY v. GERALD S.	Not for publication
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Opinion filed. Judgment affirmed.

O'Leary, J.

We concur: Sills, P.J.  
Aronson, J.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 17, 2004**

Court reconvened at 9:30 a.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are O'Leary, Acting P.J., Moore, J., and Fybel, J. M. Urena, Deputy Clerk attending.

CRIM            In re DEBBIE A. WILLIAMS  
No.             on  
G031779       Habeas Corpus

Merits. Cause called. Donald E. Landis, Jr., Deputy Public Defender argued for petitioner. Brian Gurwitz, Deputy District Attorney argued for respondent. Cause submitted.

CIVIL           AMERICAN SENIOR CARE, INC.  
No.             v.  
G032870       YORBA LINDA VENTURES et al.

Merits. Cause called. Thomas A. Pistone argued for appellant. Joel S. Miliband argued for respondents. Cause submitted.

CIVIL           GREGORY O. HOLTA  
No.             v.  
G032434       CONCORDE ACCEPTANCE CORPORATION

Merits. Cause called. Lawrence J. Poteet argued for appellant. Michael D. May argued for respondent. Cause submitted.

CIVIL           CITY OF HUNTINGTON BEACH  
No.             v.  
G031043       SCOTTSDALE INSURANCE CO. et al.

Merits. Cause called. Neal Moore, Sr. Deputy City Attorney argued for appellant and cross-respondent. Jeffrey C. Sparks argued for respondents and cross-appellants. Cause submitted.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 17, 2004 (Cont'd)**

CIVIL           FOROUGH FARROKH  
No.             v.  
G032994       CALIFORNIA UNEMPLOYMENT  
                 INSURANCE APPEALS BOARD

Merits. Cause called. Appellant Forough Farrokh argued on her own behalf.  
Gala Dunn, Deputy Attorney General made no appearance for respondent.  
Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 17, 2004 (Cont'd)**

Court reconvened at 1:30 p.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Rylaarsdam, Acting P.J., Bedsworth, J., Aronson, J., Fybel, J., and Ikola, J. M. Urena, Deputy Clerk attending.

CIVIL            MARK LEWIS  
No.                v.  
G032476        ELECTRONIC DATA SYSTEMS CORP.

Merits. Cause called. Stuart B. Esner argued for appellant. Stephen C. Sutton argued for respondent. Appellant may file a supplemental brief by 4:00 p.m. on August 24, 2004. Cause to be submitted on August 24, 2004.

CIVIL            SUSANA GUZMÁN et al.  
No.                v.  
G032892        PETER F. MUSIELSKI et al.  
G032988

Merits. Cause called. Peter F. Musielski argued for appellant Peter F. Musielski. Arthur J. Stabile argued for appellant Catalino Olaires, Jr. Raymond R. Farnell argued for respondents. Cause submitted.

CIVIL            MICHAEL OSOGWIN  
No.                v.  
G032649        TRICON GLOBAL RESTAURANTS INC. et al.

Merits. Cause called. Julian B. Bellenghi argued for appellants and cross-respondents. A. Charles Dell'Ario argued for respondent and cross-appellant. Cause submitted.

CIVIL            JOHN ELSENHEIMER  
No.                v.  
G033250        COUNTY OF ORANGE

Merits. Cause called. Sharon Quinn, Deputy Attorney General argued for appellant. No appearance for respondent. Cause submitted.



**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 17, 2004 (Cont'd)**

CIVIL            CYNTHIA B. HOLLOWAY  
No.              v.  
G032698        QUEST SOFTWARE, INC.

Merits. Cause called. Joshua M. Wolff argued for appellant. Julie M. Porter argued for respondent. Cause submitted.

CIVIL            JANE P. FOULKES  
No.              v.  
G032395        QUEST SOFTWARE INC. et al.

Merits. Cause called. Charlotte E. Costan argued for appellant. Todd E. Gordinier argued for respondents. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 17, 2004 (Cont'd)**

CIVIL  
No.  
G032380

CURT A. SANDMAN  
v.  
REGENTS OF THE UNIVERSITY  
OF CALIFORNIA

Not for publication

Opinion filed. Order and judgment affirmed.

Ikola, J.

We concur: Bedsworth, Acting P.J.  
Moore, J.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 18, 2004**

Court reconvened at 9:30 a.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Sills, P.J., Aronson, J., and Ikola, J. O. Duarte, Deputy Clerk attending.

CIVIL	MARY A. HEAPS
No.	v.
G033133	WILLIAM R. HEAPS et al.

Merits. Cause called. Margaret G. Lodise argued for appellant. Dale A. Kiken argued for respondents. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 18, 2004 (Cont'd)**

Court reconvened at 1:30 p.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Sills, P.J., O'Leary, J., and Moore, J. O. Duarte, Deputy Clerk attending.

CIVIL            CYNTHIA BURCH  
No.                v.  
G030653        JOSEPH McKEEVER

Merits. Cause called. Thomas P. Dunlap argued for appellant. Respondent Joseph McKeever argued on his own behalf. Cause submitted.

CIVIL            CYNTHIA BURCH  
No.                v.  
G030858        JOSEPH McKEEVER

Merits. Cause called. Thomas P. Dunlap argued for appellant. Respondent Joseph McKeever argued on his own behalf. Cause submitted.

CIVIL            CYNTHIA BURCH  
No.                v.  
G032088        JOSEPH McKEEVER

Merits. Cause called. Appellant Cynthia Burch argued on her own behalf. Respondent Joseph McKeever argued on his own behalf. Cause submitted.

CIVIL            CYNTHIA BURCH  
No.                v.  
G032428        JOSEPH McKEEVER

Merits. Cause called. Appellant Cynthia Burch argued on her own behalf. Respondent Joseph McKeever argued on his own behalf. Cause submitted.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 18, 2004 (Cont'd)**

CIVIL            CALVARY CHAPEL OF  
No.              COSTA MESA  
G033388       v.  
                    JOHN R. SCHMIDT

Merits. Cause called. Appellant John R. Schmidt argued on his own behalf.  
Kenneth L. Wayman argued for respondent. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 18, 2004 (Cont'd)**

CRIM  
No.  
G032566

THE PEOPLE  
v.  
KARIN DEBBY MERTZ

Not for publication

Opinion filed. Judgment affirmed in part, reversed in part, and remanded with directions.

Aronson, J.

We concur: Bedsworth, Acting P.J.  
Fybel, J.

CIVIL  
No.  
G033703  
G034085

JUDY KOLAR  
v.  
ANTHONY CALDORONE et al.

Order filed. On the court's own motion and for good cause, case number G033703 is consolidated with case number G034085 for all purposes.

Sills, P.J.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 19, 2004**

Court reconvened at 9:30 a.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Sills, P.J., Moore, J., and Fybel, J. O. Duarte, Deputy Clerk attending.

CIVIL           SYNDEE LUXENBERG  
No.             v.  
G033267       MATTHEW LUXENBERG

Merits. Cause called. John Schilling argued for appellant. Marc E. Mitzner argued for respondent. Cause submitted.

CIVIL           WESTERN EXTERMINATOR  
No.             COMPANY  
G033025       v.  
                CHRIS S. COATE

Merits. Cause called. Suzanne N. Patron argued for appellant. Douglas C. Graham argued for respondent. Cause submitted.

CIVIL           JAMES NELSON  
No.             v.  
G032754       CITY OF SAN CLEMENTE

Merits. Cause called. Patrick A. Mesisca argued for appellant. Mark J. Austin argued for respondent. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 19, 2004 (Cont'd)**

Court reconvened at 1:30 p.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Rylaarsdam, Acting, P.J., Bedsworth, J., and Ikola, J. O. Duarte, Deputy Clerk attending.

CIVIL           MICHAEL ARRIGO  
No.             v.  
G032688       VIRGINIA ARRIGO

Merits. Cause called. Brian G. Saylin argued for appellant. Jeffrey W. Doeringer argued for respondent. Cause submitted.

CIVIL           PERMANENT GENERAL  
No.             ASSURANCE CORPORATION  
G033269       v.  
                SUPERIOR COURT;  
                MARIA HERNANDEZ

Merits. Cause called. Adreinne D. Cohen argued for petitioner. Heather M. KcKeon argued for real party in interest. Cause submitted.

CIVIL           MUAMMER GONLUGUR  
No.             v.  
G033351       CIRCUIT CITY STORE, INC., et al.

Merits. Cause called. Rex D. Berry argued for appellants. Matthew A. Kaufman argued for respondent. Cause submitted.

CIVIL           PACIFIC DECISION  
No.             SCIENCES CORP., et al.  
G033648       v.  
                SUP. CRT.;  
                MELVIN MAUDLIN

Merits. Cause called. Melvin N.A. Avanzado argued for petitioners. Matthew V. Herron argued for real party in interest. Cause submitted.



**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 19, 2004 (Cont'd)**

CIVIL            PNL KWP LLC  
No.               v.  
G032676       WASTE RECOVERY &  
                     RECYCLING INC., et al.

Merits. Cause called. Cara J. Hagan argued for appellant. Kirsten H. Spira argued for respondents. Cause not submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 19, 2004 (Cont'd)**

CIVIL            MBNA AMERICA BANK, N.A.  
No.                v.  
G033815        THIEU TON

Order filed. Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is DISMISSED pursuant to Rule 17(a)(1).

Sills, P.J.

CIVIL            ORANGE COUNTY SOCIAL  
No.                SERVICES AGENCY  
G033820        v.  
RICARDO L.

Order filed. Counsel for appellant Ricardo L. has filed a letter stating no arguable issues could be found and has so notified him. Ricardo L. was granted 30 days to present any issue he believed was arguable by filing a supplemental brief, but he did not do so. Accordingly, the appeal is DISMISSED. (*In re Sade C.* (1966) 13 Cal.4<sup>th</sup> 952, 994.)

Sills, P.J.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 19, 2004 (Cont'd)**

CIVIL            DAVID B.  
No.               v.  
G033918        THE SUPERIOR COURT  
                 OF ORANGE COUNTY;  
                 ORANGE COUNTY SOCIAL  
                 SERVICES AGENCY

Order filed. On the court's own motion and for good cause, the submission order is VACATED. The parties are invited to provide supplemental letter briefs. Each party may file a supplemental letter brief addressing these issues on or before August 26, 2004. Additionally, each party may file a letter brief responding to the arguments advanced by the others, on or before September 2, 2004. On September 3, 2004, the matter will be resubmitted for the period allowed by law. (Cal. Rules of Court, rule 23(e)(1).) The hearing pursuant to Welfare and Institutions Code section 366.26, currently scheduled for August 25, 2004, is STAYED until further order of this court.

Rylaarsdam, Acting P.J.

We concur:    Bedsworth, J.  
                 Moore, J.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 20, 2004**

Court reconvened at 9:30 a.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Sills, P.J., O'Leary, J., and Moore, J. Antoinette Cajigal, Deputy Clerk attending.

CRIM            THE PEOPLE  
No.            v.  
G032510       DERON Q. HOLLINS  
G032511

Katherine E. Greenebaum argued for appellant. Charles C. Ragland, Deputy Attorney General argued for respondent. Cause submitted.

CRIM            RODNEY HEMINGWAY  
No.            v.  
G033896       SUPERIOR COURT;  
                 THE PEOPLE

Kevin J. Phillips, Deputy Public Defender argued for petitioner. Brenda L. McCormick argued for respondent. Cause submitted.

CRIM            JOHN STEIDINGER  
No.            v.  
G033722       SUPERIOR COURT;  
                 THE PEOPLE

Kevin J. Phillips, Deputy Public Defender argued for petitioner. Brenda L. McCormick argued for respondent. Cause submitted.

CRIM            MARVIN GIL  
No.            v.  
G033946       SUPERIOR COURT;  
                 THE PEOPLE

Kevin J. Phillips, Deputy Public Defender argued for petitioner. Brenda L. McCormick argued for respondent. Cause submitted.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 20, 2004 (Cont'd)**

CRIM            STEVEN GAMBLE  
No.            v.  
G033945      SUPERIOR COURT;  
                 THE PEOPLE

Kevin J. Phillips, Deputy Public Defender argued for petitioner. Brenda L. McCormick argued for respondent. Cause submitted.

CRIM            CHARLES E. GRANT  
No.            v.  
G033764      SUPERIOR COURT;  
                 THE PEOPLE

Allan H. Stokke argued for petitioner. Brenda L. McCormick argued for respondent. Cause submitted.

CRIM            RAFAEL E. RODRIGUEZ  
No.            v.  
G033998      SUPERIOR COURT;  
                 THE PEOPLE

Rodolfo F. Ruiz argued for petitioner. Brenda L. McCormick argued for respondent. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 20, 2004 (Cont'd)**

Court reconvened at 1:30 p.m. in the courtroom located at 925 N. Spurgeon Street, Santa Ana, California 92701. Panel members are Sills, P.J., Rylaarsdam, J., and Moore, J. Antoinette Cajigal, Deputy Clerk attending.

CRIM        THE PEOPLE  
No.        v.  
G031674    CHENG LIM

Amanda Benedict argued for appellant. Pat Zaharopoulos, Deputy Attorney General argued for respondent. Cause submitted.

CRIM        THE PEOPLE  
No.        v.  
G031747    CHRISTOPHER J. MILLER

Patrick E. DuNah argued for appellant. Pat Zaharopoulos, Deputy Attorney General argued for respondent. Cause submitted.

CRIM        THE PEOPLE  
No.        v.  
G032161    ROBERT A. WILSON

Paul R. Ward argued for appellant. Stacey Tyler, Deputy Attorney General argued for respondent. Cause submitted.

CRIM        THE PEOPLE  
No.        v.  
G031390    SUNNY J. WONG

Ronald Talmo argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Cause submitted.

Court declared a recess.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 20, 2004 (Cont'd)**

CRIM No. G032461	THE PEOPLE v. JAMES DOYLE TURNAGE  Opinion filed. Judgment affirmed.  We concur: Bedsworth, Acting P.J. Moore, J.	Not for publication   Fybel, J.
CIVIL No. G032755	JANE L. SHADE v. ANTHONY RACKAUCKAS et al.  Opinion filed. Judgment reversed.  We concur: Rylaarsdam, J. O'Leary, J.	Not for publication   Sills, P.J.
CRIM No. G033402	In re KENNETH ROBERT OGEA on Habeas Corpus  Opinion filed. Petition denied.  We concur: O'Leary, J. Moore, J.	Certified for publication   Fybel, J.
CRIM No. G033415	THE PEOPLE v. MICHAEL EDWARD DEMPSEY  Opinion filed. Judgment affirmed.  We concur: Rylaarsdam, J. Bedsworth, J.	Not for publication   Sills, P.J.

**State of California, Court of Appeal  
Fourth Appellate District, Division 3  
August 20, 2004 (Cont'd)**

CIVIL            THOMAS RICO et al.  
No.              v.  
G034251        STEPHEN R. RAKOWER et al.

Order filed. Pursuant to California Rules of Court, rule 8(b)(1), the appeal filed July 19, 2004, is DISMISSED for appellants' failure to timely designate the record. (Cal. Rules of Court, rule 5(a)(1).)

Sills, P.J.